

Form 9417 (Rev. December 1998)	Department of the Treasury – Internal Revenue Service Employee Plan Deficiency Checksheet Attachment #12 Section 401(k) Requirements	Date
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<i>For IRS Use</i>	Please furnish the amendment(s) requested in the section(s) checked below.
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1201, 1202		A plan that is not a profit-sharing, stock bonus, pre-ERISA money purchase pension, or rural cooperative plan will fail to satisfy the requirements of section 401(a) of the Code if the plan includes a cash or deferred arrangement. A cash or deferred arrangement is an arrangement under which an employee may elect, with respect to amounts not currently available to the employee and not designated or treated as after tax contributions, to have the employer contribute such amounts to the trust or provide such amounts to the employee. Since your plan is not one described in this section, it may not include a cash or deferred arrangement and should be amended accordingly. IRC section 401(k)(1) and Regs. section 1.401(k)-1(a).
I.a.		
1203		Section _____ of the plan should be amended to provide that an employee's election to defer may be made only with respect to an amount which the employee could otherwise elect to receive in cash and
II.a.		which is not currently available to the employee, i.e., an amount which the employee is not eligible to receive at the time of the election to defer. IRC section 401(k)(2)(A), Regs. sections 1.401(k)-1(a)(3) and 1.401(k)-1(e)(2).
1204		Section _____ of the plan should be amended to provide for a separate accounting for the portion of each employee's benefit under the plan that is attributable to elective contributions (and any other amounts
II.b.		treated as elective contributions). A cash or deferred arrangement (CODA) under a plan which does not provide such separate accounting will not be a qualified CODA unless all amounts held under the plan are subject to the nonforfeitable and distribution limitations that apply to elective contributions. Regs. section 1.401(k)-1(e)(3).
1206		Section _____ of the plan should be amended to provide that a participant's elective contributions for his or her taxable year under the plan and all other plans, contracts and arrangements of the employer will
II.c.		not exceed the limit imposed by section 402(g) of the Code for the calendar year with or within which such taxable year begins. IRC section 401(a)(30).
1207		It must be demonstrated that the employees eligible under the cash or deferred arrangement satisfy the coverage requirements of section 410(b). IRC section 401(k)(3)(A)(i) and Regs. section 1.401(k)-1(b)(1).
III.a.		
1208		Section _____ of the plan should be amended to allow elective contributions after no more than one year of service. The plan may impose a minimum age requirement not greater than 21. IRC section
III.b.	401(k)(2)(D).	
1209		Section _____ of the plan should be amended to provide that each employee's right to the amount attributable to elective contributions is immediately nonforfeitable regardless of the participant's age and
IV.a.		service. IRC section 401(k)(2)(C) and Regs. section 1.401(k)-1(c).
1211, 1212, 1213		Section _____ of the plan should be amended to provide that the plan will meet the nondiscrimination test set forth in section 401(k)(3)(A)(ii) of the Code that applies to elective contributions.
V.a.(i), (ii)		Under this test, the actual deferral percentage (ADP) for the group of eligible highly compensated employees for the current plan year may not exceed the greater of (a) 125% of the ADP for all other eligible employees for the prior plan year or (b) the lesser of twice the ADP for all other eligible employees for the prior plan year, or such ADP for all other eligible employees for the prior plan year plus 2%. If the plan is using the current year testing method, then "the current plan year" should be substituted for "the prior plan year" in the previous sentence. The ADP for a group of eligible employees is the average of the ratios (calculated separately for each employee) of the amount of elective contributions (and other contributions treated as elective contributions) made on behalf of each employee for the relevant plan year, divided by the employee's compensation for that plan year. Elective contributions are any employer contributions to a plan that were subject to a cash or deferred election under a cash or deferred arrangement. For the purpose of this requirement, the plan may incorporate by reference the provisions of section 401(k)(3) of the Code, section 1.401(k)-1(b) of the regulations and Notices 97-2 and 98-1. IRC section 401(k), Regs. sections 1.401(k)-1(b)(2) and (4), and Notices 97-2, 1997-1 C.B. 348, and 98-1, 1998-3 I.R.B. 42.

1215, 1216		Section _____ of the plan should be amended to provide that the plan will take into account the actual deferral ratios of all eligible employees for purposes of the actual deferral percentage (ADP) test in section 401(k). For this purpose, an eligible employee is any employee who is directly or indirectly eligible to make a cash or deferred election under the plan for all or a portion of a plan year and includes: an employee who would be a plan participant but for the failure to make required contributions; an employee whose eligibility to make elective contributions has been suspended because of an election (other than certain one-time elections) not to participate, a distribution, or a loan; and, an employee who cannot defer because of the section 415 limits on annual additions. In the case of an eligible employee who makes no elective contributions the deferral ratio that is to be included in determining the ADP is zero. IRC section 401(k)(3)(B), Regs. sections 1.401(k)-1(g)(1) and (4).
V.b.(i)		
1218		Section _____ of the plan should be amended to provide that an elective contribution will be taken into account under the actual deferral percentage test of section 401(k)(3)(A) of the Code for a plan year only if it relates to compensation that either would have been received by the employee in the plan year (but for the deferral election) or is attributable to services performed by the employee in the plan year and would have been received by the employee within 2½ months after the close of the plan year (but for the deferral election). Regs. section 1.401(k)-1(b)(4).
V.b.(ii)		
1220		Section _____ of the plan should be amended to provide that an elective contribution will be taken into account under the actual deferral percentage test of section 401(k)(3)(A) of the Code for a plan year only if it is allocated to the employee as of a date within that plan year. For this purpose, an elective contribution is considered allocated as of a date within a plan year if the allocation is not contingent on participation or performance of services after such date and the elective contribution is actually paid to the trust no later than 12 months after the plan year to which the contribution relates. Regs. section 1.401(k)-1(b)(4).
V.b.(iii)		
1221		Section _____ of the plan should be amended to provide that for purposes of determining whether a plan satisfies the actual deferral percentage test of section 401(k), all elective contributions that are made under two or more plans that are aggregated for purposes of section 401(a)(4) or 410(b) (other than section 410(b)(2)(A)(ii)) are to be treated as made under a single plan and that if two or more plans are permissively aggregated for purposes of section 401(k), the aggregated plans must also satisfy sections 401(a)(4) and 410(b) as though they were a single plan. IRC section 401(k)(3) and Regs. section 1.401(k)-1(b)(3).
V.b.(iv)		
1223		Section _____ of the plan should be amended to provide that in calculating the actual deferral percentage for purposes of section 401(k), the actual deferral ratio of a highly compensated employee will be determined by treating all cash or deferred arrangements under which the highly compensated employee is eligible (other than those that may not be permissively aggregated) as a single arrangement. IRC section 401(k)(3) and Regs. section 1.401(k)-1(g)(1)(ii).
V.b.(v)		
1225		Section _____ of the plan should be amended to provide that the actual deferral percentages (ADPs) of highly compensated employees (HCEs) and non-highly compensated employees (NHCEs) are determined for the relevant plan years. If the plan is using the prior year testing method, the ADP of HCEs is determined for the current plan year (the "testing year") and the ADP of NHCEs is determined for the prior plan year. If, on the other hand, the plan is using the current year testing method, the ADPs of both HCEs and NHCEs are determined for the current year. IRC 401(k)(3)(A) and (B) and Notice 97-2, 1997-1 C.B. 348.
V.b.(vi)		
1229		Section _____ of the plan should be amended so that the availability of elective contributions does not discriminate in favor of highly compensated employees. IRC section 401(a)(4) and Regs. section 1.401(k)-1(a)(4)(iv).
V.c.		
1274		Nonelective contributions and matching contributions may be treated as elective contributions for purposes of the actual deferral percentage test of section 401(k) only if such contributions are nonforfeitable when made and subject to the same distribution restrictions that apply to elective contributions. Nonelective contributions and matching contributions which may be treated as elective contributions must satisfy these requirements without regard to whether they are actually taken into account as elective contributions. Section _____ of the plan should be amended accordingly. Regs. section 1.401(k)-1(g)(13).
VI.a.(i), (ii)		

1276		Section _____ of the plan should be amended to provide that nonelective contributions and/or matching contributions may be treated as elective contributions only if the conditions described in section
VI.b.	1.401(k)-1(b)(5)	of the regulations are satisfied. Regs. section 1.401(k)-1(b)(5).
1231, 1232, 1233, 1234		Section _____ of the plan should be amended to provide that amounts attributable to elective contributions may not be distributed earlier than upon one of the following events:
VII.a.		<ol style="list-style-type: none"> 1. The employee's retirement, death, disability or separation from service; 2. The termination of the plan without establishment or maintenance of another defined contribution plan (other than an ESOP, SEP or SIMPLE IRA Plan); 3. In the case of a profit-sharing, stock bonus or rural cooperative plan, the employee's attainment of age 59½, or the employee's hardship; 4. The sale or other disposition by a corporation to an unrelated corporation of substantially all of the assets used in a trade or business, but only with respect to employees who continue employment with the acquiring corporation and the acquiring corporation does not maintain the plan after the disposition; and, 5. The sale or other disposition by a corporation of its interest in a subsidiary to an unrelated entity but only with respect to employees who continue employment with the subsidiary and the acquiring entity does not maintain the plan after the disposition. <p>Paragraphs 2, 4, and 5, above, apply only if the distribution is in the form of a lump sum. IRC sections 401(k)(2)(B), (7)(C) and (10)(A) and Regs. sections 1.401(k)-1(d)(1), (3), (4) and (5).</p>
1235		Section _____ of the plan should be amended to set forth nondiscriminatory and objective standards for determining whether an employee, for purposes of entitlement to a hardship distribution, has an
VII.b.(i)		immediate and heavy financial need. See section 1.401(k)-1(d)(2)(iv)(A) of the regulations regarding certain deemed immediate and heavy financial needs.
1237		Section _____ of the plan should be amended to provide that a hardship distribution may be made only if it is necessary to satisfy an immediate and heavy financial need. For this purpose, a distribution is
VII.b.(ii)		not necessary to the extent it exceeds the amount necessary (including taxes) to relieve the need or to the extent the need may be satisfied from other resources reasonably available to the employee. See section 1.401(k)-1(d)(2)(iv)(B) of the regulations regarding distributions that are deemed necessary to satisfy financial need.
1239, 1240		Section _____ of the plan should be amended to provide that the amount of excess contributions will be determined in the following manner. First, determine how much the actual deferral ratio (ADR) of the
VII.f.(i), g.(ii)		highly compensated employee with the highest ADR would have to be reduced to satisfy the actual deferral percentage (ADP) test or cause such ratio to equal the ADR of the highly compensated employee with the next highest ratio. Second, this process is repeated until the ADP test would be satisfied. The amount of excess contributions is equal to the sum of these hypothetical reductions multiplied, in each case, by the highly compensated employee's compensation. IRC section 401(k)(8)(B), Regs. section 1.401(k)-1(f)(2) and Notice 97-2, 1997-1 C.B. 348.
1241		Section _____ of the plan should be amended to provide that the identity of the highly compensated employees subject to distribution (or recharacterization) of excess contributions will be determined using
VII.f.(ii), g.(iii)		the "dollar leveling method" starting with the highly compensated employee with the greatest dollar amount of elective and other contributions treated as elective contributions for the plan year until the amount of excess contributions has been accounted for. IRC section 401(k)(8)(C) and Notice 97-2, 1997-1 C.B. 348.
1247		Section _____ of the plan should be amended to provide that the amount of excess contributions to be distributed or recharacterized shall be reduced by excess deferrals previously distributed for the taxable
VII.g.(iii), g.(iv)		year ending in the same plan year and excess deferrals to be distributed for a taxable year will be reduced by excess contributions previously distributed or recharacterized for the plan year beginning in such taxable year. Regs. section 1.401(k)-1(f)(5)(i).

1249		Section _____ of the plan should be amended to provide that the distribution of excess contributions will include the income allocable thereto. The income allocable to excess contributions includes income for the plan year for which the excess contributions were made. The plan may also provide that it includes income for the period between the end of the plan year and the date of distribution. See section 1.401(k)-1(f)(4) of the regulations for a description of the manner in which income allocable to excess contributions is to be calculated. IRC section 401(k)(8)(A) and Regs. section 1.401(k)-1(f)(4).
VII.f.(iv)		
1251		Failure to correct excess contributions by the close of the plan year following the plan year for which they were made will cause the cash or deferred arrangement to fail to satisfy the requirements of section 401(k)(3) for the plan year for which the excess contributions were made and for all subsequent years they remain in the trust. Also, the employer will be liable for a 10% excise tax on the amount of excess contributions unless they are corrected within 2½ months after the close of the plan year for which they were made. Section _____ of the plan should be amended accordingly. IRC sections 401(k)(8)(A) and 4979, and Regs. section 1.401(k)-1(f)(6).
VII.f.(v), g.(v)		
1253		Section _____ of the plan should be amended to provide that excess contributions will not be recharacterized with respect to a highly compensated employee to the extent that the recharacterized amounts, in combination with employee contributions actually made by the employee, exceed the maximum amount of employee contributions (determined prior to applying section 401(m)(2)(A) of the Code) that the employee is permitted to make under the plan in the absence of recharacterization. Regs. section 1.401(k)-1(f)(3)(iii)(B).
VII.g.(i)		
1255		Section _____ of the plan should be amended to provide that recharacterized excess contributions will remain subject to the nonforfeitability requirements and distribution limitations that apply to elective contributions. Regs. section 1.401(k)-1(f)(3)(iii).
VII.g.(vi)		
1257, 1258		Section _____ of the plan should be amended to define highly compensated employee as an employee who:
VIII.a.		<ol style="list-style-type: none"> 1. was a 5-percent owner, as defined in section 416(i)(1)(A)(iii), at any time during the determination year or the look-back year, or 2. had compensation from the employer for the look-back year in excess of \$80,000 and, if the employer so elects in the plan, was in the top-paid group for the look-back year. <p>IRC section 414(q), Regs. section 1.414(q)-1T and Notice 97-45, 1997-33 I.R.B. 7.</p>
1261, 1262, 1263		For purposes of the definition of highly compensated employee, section _____ of the plan should be amended to provide that:
VIII.b.		<ol style="list-style-type: none"> 1. The determination year is the plan year for which the determination of who is highly compensated is being made. 2. The look-back year is the 12-month period immediately preceding the determination year, or if the employer so elects in the plan, the calendar year beginning with or within such 12-month period. 3. Compensation is compensation within the meaning of section 415(c)(3). 4. Employers aggregated under section 414(b), (c), (m), or (o) are treated as a single employer. 5. If the employer has made a top-paid group election, the top paid group consists of the top 20% of employees ranked on the basis of compensation received during the look-back year. For purposes of determining the number of employees in the top-paid group, employees described in section 414(q)(5) and Q&A 9(b) of section 1.414(q)-1T of the regulations are excluded. <p>IRC section 414(q), Regs. section 1.414(q)-1T and Notice 97-45, 1997-33 I.R.B. 7.</p>
1271, 1272		Section _____ of the plan should be amended to define compensation, for purposes of the actual deferral percentage test of section 401(k) and the determination of excess contributions, in a manner that satisfies section 414(s) and over a period specified in section 1.401(k)-1(g)(2) of the regulations. A definition will satisfy section 414(s) if it conforms to one of the definitions described in Regs. sections 1.414(s)-1(c)(2) and 1.414(s)-1(c)(3).
VIII.c.		Alternatively, submit a demonstration that the definition is nondiscriminatory. IRC sections 401(k)(9) and 414(s) and Regs. sections 1.401(k)-1(g)(2) and 1.414(s)-1.

1278		Section _____ of the plan should be amended to provide that no contributions can be made, or benefits accrued for services during the year, on behalf of any eligible employee under any other plan,
IX.a.		contract, pension, or trust described in section 219(g)(5)(A) or (B), maintained by the employer. IRC section 401(k)(11)(C).
1279		Section _____ of the plan should be amended to provide that the plan year is the calendar year. IRC sections 401(k)(11) and 408(p)(6)(C).
IX.b.		
1280		Section _____ of the plan should be amended to provide that for purposes of applying the 401(k) SIMPLE provisions, compensation has the meaning in section 408(p)(6)(A) as limited to the section
IX.c.		401(a)(17) amount. IRC sections 401(a)(17), 401(k)(11)(D) and 408(p)(6)(A).
1281		Section _____ of the plan should be amended to provide that no employee may defer more than \$6,000 (as adjusted) annually to the plan. IRC section 401(k)(11)(B).
IX.d.(i)		
1282		Section _____ of the plan should be amended to provide that, each year, the employer will contribute either a matching contribution (limited to 3 percent of the employee's compensation) to each employee who
IX.d.(ii)		made elective contributions or a 2 percent nonelective contribution to each employee who earned at least \$5,000 (or a lesser amount) in the preceding year. IRC section 401(k)(11)(B).
1283		Section _____ of the plan should be amended to provide that no other contribution may be made to the plan. IRC section 401(k)(11)(B).
IX.d.(iii)		
1284		Section _____ of the plan should be amended to provide that all benefits attributable to contributions made under the plan are nonforfeitable at all times. IRC section 401(k)(11)(A)(iii).
IX.d.(iv)		
1285		Section _____ of the plan should be amended to provide that employees can make deferral elections during the applicable 60-day periods described in section 401(k)(11)(B)(iii) and Rev. Proc. 97-9. Employees
IX.e.		must be permitted to terminate an election any time during the year. IRC section 401(k)(11)(B)(iii) and Rev. Proc. 97-9, 1997-1 C.B. 624.
1286		Section _____ of the plan should be amended to provide that the employer will notify each eligible employee prior to the 60-day election period described in section 401(k)(11)(B)(iii) and Rev. Proc. 97-9, of
IX.f.		the employee's eligibility under the plan and the specific employer contributions that will be made for the year. IRC section 401(k)(11)(B)(iii) and Rev. Proc. 97-9, 1997-1 C.B. 624.